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October 31, 2012

JEDEDIAH WAKEFIELD

EMAIL JWAKEFIELD@FENWICK.COM
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VIA ECF AND E-MAIL [leung_chambers@mnd.uscourts.gov]

The Honorable Tony N. Leung
United States District Court
342 Warren E. Burger Federal Courthouse
316 N. Robert Street
St. Paul, MN 55101

Re: Ideas to Go, Inc. v. Spigit, Inc.
Court File No. 12-CV01975 MJD TNL

Dear Judge Leung:

This firm represents Defendant Spigit, Inc. in this case. We regret having to do so, but are compelled write in response to Plaintiff's letter of October 31, which requests that the Court schedule a Rule 16 conference just one week from now, on November 7, 2012.

In that letter, Plaintiff's counsel represents that Plaintiff has attempted to schedule a meeting of the parties under L.R. 26.1(f), but that "Defendant has declined to agree to such a meeting." This is simply not true. On Monday of this week, I sent Plaintiff a written proposal to conduct the meeting on November 7. This was consistent with Plaintiff's earlier proposal to conduct the meeting during the week of November 5-9. This is reflected in the attached email, which also reflects the parties' ongoing discussions about potentially resolving the pending motions.

Given our agreement to conduct the Rule 26 meeting on November 7—during the week requested by Plaintiff—we feel that it would be premature to conduct a Rule 16 conference on that same day. That date would not permit the parties sufficient time to prepare for and conduct the Rule 26 meeting, agree to the language of a joint report following the meeting, and prepare for the conference with the Court.

Respectfully,



Jedediah Wakefield

Attachment
27877/00402/LIT/1352576.1

ATTACHMENT

Jedediah Wakefield

From: Jedediah Wakefield
Sent: Monday, October 29, 2012 3:45 PM
To: 'Edward P. Sheu'
Cc: Steffen, James R.; Kathleen Lu; Guinevere Jobson
Subject: RE: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Ted:

First, are you agreeing to set aside the default, or is that agreement contingent on demands 2 and 3? Please advise.

Second, we don't believe that Spigit should be required to answer a complaint alleging infringement of registered marks when the registrations do not exist. We also don't understand why amending the complaint would be more expensive than filing a stipulation to amend it, as you propose in point 2. As a compromise on this point, however, we would agree to answer the complaint within 10 days of receipt of written notice from you that the registrations have issued (or in the alternative, notice that the registrations have not issued).

Third, regarding your proposal for November 7, a week is not enough time to prepare for a Rule 26 conference, hold the conference, agree to a joint report, and prepare for a case management conference with the court. We could be available for a telephonic Rule 26 conference of counsel on November 7, however.

Jed

Jed Wakefield
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-----Original Message-----

From: Edward P. Sheu [<mailto:esheu@bestlaw.com>]
Sent: Monday, October 29, 2012 3:10 PM
To: Jedediah Wakefield
Cc: Steffen, James R.; Candy Close; Guinevere Jobson; Kathleen Lu
Subject: RE: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Jed,

We'll stipulate as follows:

1. ITG will stipulate to set aside the default.
2. We would appreciate not having to go through the trouble and expense of amending our complaint when the registration will be issued shortly (probably in a couple of weeks). If

Spigit is willing to answer the complaint by November 7, or thereabouts, we'll let you know once the registration is issued and the pleadings can be amended as necessary by stipulation. 3. ITG would like to set up a Rule 16 conference with the court and would like to be able to tell the magistrate that the parties jointly request the conference. I believe we can agree on a Rule 26 report before then based on the drafts I have sent you. Since you noticed November 7 at 10AM for the motions, I suggest we use that date and time, instead of arguing motions, for the Rule 16 conference. Naturally, I will not have an objection to you appearing by telephone.

Ted.

-----Original Message-----

From: Jedediah Wakefield [mailto:JWakefield@Fenwick.com]
Sent: Wednesday, October 24, 2012 6:13 PM
To: Edward P. Sheu
Cc: Steffen, James R.; Candy Close; Guinevere Jobson; Kathleen Lu
Subject: RE: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Ted:

Regarding the pending motions, we would propose (1) the parties stipulate to set aside the default, (2) the parties stipulate that the first cause of action of ITG's complaint be dismissed without prejudice, (3) Spigit would file its answer to the remaining claims by November 7, and (4) ITG would have leave to amend its complaint to add a Section 1114 claim if and when ITG obtains registrations on the principal register. Please advise if this proposal is acceptable.

Regarding the other scheduling points, we don't think a case management conference on November 7 makes sense, but we will of course conduct a Rule 26 conference of counsel in a timely fashion, and in accordance with the rules.

Jed

Jed Wakefield
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-----Original Message-----

From: Edward P. Sheu [mailto:esheu@bestlaw.com]
Sent: Tuesday, October 23, 2012 1:04 PM
To: Jedediah Wakefield
Cc: Steffen, James R.; Candy Close; Guinevere Jobson; Kathleen Lu
Subject: RE: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Jed,

I don't have any conflicts with November 7.

Regarding the Rule 26 conference and pending motions, why don't we stipulate as follows:

1. ITG will stipulate to set aside Spigit's default; 2. Spigit will withdraw its motion to dismiss count I; 3. Spigit will answer the complaint by November 7; 4. We'll jointly ask the court to use your time on November 7 for the Rule 16 conference and complete the Rule 26 report before then.

Ted.

-----Original Message-----

From: Jedediah Wakefield [mailto:JWakefield@Fenwick.com]
Sent: Tuesday, October 23, 2012 12:29 PM
To: Edward P. Sheu
Cc: Steffen, James R.; Candy Close; Guinevere Jobson; Kathleen Lu
Subject: RE: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Ted:

We've cleared November 7 for the hearing date. Please advise if you have any conflicts with that date.

Regarding scheduling for a Rule 26 Conference, we'll get back to you separately.

Regarding the pending motions, do you have anything to propose, or is your position spelled out in your opposition papers?

Thanks,

Jed

-----Original Message-----

From: Edward P. Sheu [mailto:esheu@bestlaw.com]
Sent: Monday, October 22, 2012 8:29 AM
To: Jedediah Wakefield
Cc: Steffen, James R.; Candy Close; Guinevere Jobson; Kathleen Lu
Subject: RE: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Jed. I'm proposing a meet and confer that will address all topics that we're supposed to discuss during a Rule 26 conference, which would necessarily include your client's pending motions since Rule 26 requires consideration of, among other things, matters to be addressed at the Rule 16 conference (i.e., disposing of pending motions). I believe my representations to the court have been accurate, and I did not notice or schedule any motions. Please let me know if you are willing to meet and confer and also whether you have contacted the magistrate to obtain a new hearing date. Ted.

-----Original Message-----

From: Jedediah Wakefield [mailto:JWakefield@Fenwick.com]
Sent: Monday, October 22, 2012 10:10 AM
To: Edward P. Sheu
Cc: Steffen, James R.; Candy Close; Guinevere Jobson; Kathleen Lu
Subject: Re: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Ted:

Are you renewing your request for a Rule 26 conference, or are you proposing something else? To be clear, contrary to your representation to the court, you have never sought to meet and confer about Spigit's currently pending motions.

Sent from my mobile phone.

On Oct 22, 2012, at 7:51 AM, "Edward P. Sheu" <esheu@bestlaw.com<mailto:esheu@bestlaw.com>> wrote:

Jim,

Ideas to Go, Inc. is renewing its request to meet and confer. I recommend the week of November 5-9.

Please let me know if Spigit, Inc. is willing to meet and confer or whether we need to raise this issue with the court.

Thanks,

Ted.

From: Steffen, James R. [mailto:James.Steffen@FaegreBD.com]
Sent: Saturday, September 29, 2012 2:05 PM
To: Edward P. Sheu
Cc: Jedediah Wakefield; Candy Close; Guinevere Jobson; Kathleen Lu
Subject: RE: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Ted -

The request for a meeting the week of October 22 is premature in view of the procedural status of the action and Local Rule 26.1.

We will, of course, be prepared to meet at a later time consistent with the rules.

Best regards,
Jim

James R. Steffen
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Minneapolis, MN 55402-3901, USA

From: Edward P. Sheu [mailto:esheu@bestlaw.com]<mailto:[mailto:esheu@bestlaw.com]>
Sent: Wednesday, September 26, 2012 5:11 PM

To: Steffen, James R.
Cc: Jedediah Wakefield; Candy Close
Subject: Ideas to Go, Inc. v. Spigit, Inc., Case No. 12-1975--Request For Rule 26(f) Meeting

Dear Counsel,

This is a request for a Rule 26(f) conference, and attached are a proposed Rule 26(f) Report and a proposed Stipulation for Protective Order.

I am free most of the week of October 22 and recommend October 22 at 11AM Central Time. Please let me know your availability.

Thanks,

Edward P. Sheu
Attorney

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<Stipulation_for_Protective_Order.docx>
<Rule_26(f)_Report.doc>

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